IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 51 1991.

The Commissioner of Income-tax,
Central-I, Bombay. ... Applicant.

V/s.

M/s Indian Smelting & Refining
Co.Ltd. ... Respondent.

Shri Ashok Kotangale for the applicant.

Shri S.J. Mehta for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 11th July 2005.

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the I.T.A.T. was justified in holding that the assessee is entitled for deduction on the provisions made in the books amounting to Rs. 1,30,92,566/- merely because of receipt of show cause notice from Excise Department?"

. Learned counsel for the parties fairly pointed out that the above question with respect to

Assessment Year 1980-81 was referred for opinion of this Court in the case of C.I.T. vs. Indian Smelting & Refining Co.Ltd. and the said question after hearing the parties was answered in negative and in favour of the revenue for the reasons recorded in the said judgment reported in (1998)230 ITR 154. The said judgment of the Division Bench of this Court has been affirmed by the Apex Court in the case of the assessee itself i.e. Indian Smelting & Refining Co. Ltd. vs.C.I.T. reported in (2001) 248 ITR 4.

. In view of the above, for the reasons recorded inthe judgment of the Division Bench of this Court in the case of the assessee itself, the questioin referred to us is answered in the negative, in favour of the revenue and against the assessee.

. Reference accordingly stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**